

MAY 1995

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: MONTANA

LIENS AND ADJUSTMENTS OR RECOVERIES

1. The State uses the following process for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home:

The department uses either a medical review contractor or the department's utilization review program to make a determination as to whether an individual cannot reasonably be expected to return home. If this process is not used, state law allows a presumption of permanent institutionalization if the individual has been in a facility for more than six months and no discharge plan has been developed. In either case, the recipient is mailed a notice of intent to file a lien and informed of appeal rights and procedure. The notice will contain information concerning why a lien may be filed, that the home does not need to be sold, instructions on who to contact if an exemption applies and how to file an appeal. To file an appeal the recipient will use the same process as that for any fair hearing which requires completion of a simple form. The hearing procedures will be the same as used for all other recipient or provider fair hearing requests.

2. The following criteria are used for establishing that a permanently institutionalized individual's son or daughter provided care as specified under regulations at 42 CFR §433.36(f):

State law does not allow recovery as a result of a lien if a sibling or child has resided in the home for one year or more prior to the recipient entering the nursing home and is still residing in the home. The law makes a presumption that care was provided and the child is not required to provide evidence. Once the child is no longer residing in the home, the department may recover.

3. The State defines the terms below as follows:

- o estate

An estate consists of all real and personal property included in an estate as probated under the uniform probate code, as well as any property received by an heir or devisee by distribution or survival such as joint tenancy, tenancy in common, right to survivorship, living trust, etc.

- o individual's home

Any real property in which the recipient had an ownership interest at the time of death and in which they were residing at the time of their death or was their last residence prior to institutionalization.

- o equity interest in the home

equity interest in the market value of the home less any unpaid property taxes, any prior recorded mortgage or any other prior recorded encumbrance, interest or claim.

- o residing in the home for at least one or two years on a continuous basis, and

Using the home as a principal place of residence for at least one year and not establishing a residence elsewhere at any time during that year.

- o lawfully residing.

Residing in the home with the permission of the owner or their guardian.

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4. The State defines undue hardship as follows:

A. The heirs would become eligible for public assistance without receipt of the proceeds from the estate or would not be able to leave public assistance if they did not receive the proceeds.

B. If the property is a business which provides the sole means of support of the heir.

C. If the heir is a relative who had been residing in the home for any period of time and does not have the means to find alternate shelter.

5. The following standards and procedures are used by the State for waiving estate recoveries when recovery would cause an undue hardship, and when recovery is not cost-effective:

The procedure for waiving recovery for undue hardship is for the applicant to file an application on the form prescribed by the department. The department may require the applicant to submit any documentation regarding the applicant's finances, employment, expenses, etc. The standards and procedures for waiving recovery when not cost effective are specified in state law and generally allow the department to consider the estimated cost of recovery, the amount likely to be recovered, the likelihood that recovery, will cause a person to become eligible for public assistance and the importance of the case or the issues that may recur with respect to the administration or implementation of the law.

6. The State defines cost-effective as follows (include methodology/thresholds used to determine cost-effectiveness):

If a contractor is performing recovery work, it is a cost effective case if the amount of recovery is sufficient to yield a contingency fee payment to the contractor which exceeds its cost to recover the asset. If the department is performing the recovery, it is a cost effective case if the amount of recovery exceeds the costs such as administrative, legal fees, travel and the consideration of the factors listed in number 5 above.

7. The State uses the following collection procedures (include specific elements contained in the advance notice requirement, the method for applying for a waiver, hearing and appeals procedures, and time frames involved):

Files a creditor's claim against the estate and notifies the personal representative of any appeal rights and exemptions. Recovers money based upon priority in probate code. If recovering from property outside formal probate, the department recovers all assets not subject to a prior lien or right.

Liens: Send notice to recipient with a explanation of right to appeal and process for doing so at least 45 days prior to filing lien. The applicant must request the hearing within 30 days of receipt of the notice of intent to file a lien. If a hearing is requested, the department may not file a lien until permitted to do so by the hearing officer.

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(New)

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